

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Steven R. Thomsen,

Plaintiff,

v.

ORDER

Civ. No. 01-1386(MJD/RLE)

Jo Anne B. Barnhart,  
Commissioner, Social Security  
Administration,

Defendant.

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The above-entitled matter comes before the Court upon the Plaintiff's objections to the Report and Recommendation of Chief United States Magistrate Judge Raymond Erickson dated December 16, 2005. Plaintiff objects to the recommendations made by the Magistrate Judge on the basis that he did not properly assess the VA's finding of employability by taking notice of the VA regulation that defines "unemployability" at 38 C.F.R. § 4.16.

Pursuant to statute, the Court has conducted a de novo review of the record. 28 U.S.C. § 636(b)(1); Local Rule 72.1(c). Based on that review the Court ADOPTS the Report and Recommendation dated December 16, 2005. The argument raised in Plaintiff's objection, that the Court take judicial notice of 38 C.F.R. § 4.16, was not raised before the Magistrate Judge. Therefore, Plaintiff cannot raise such argument for the first time in his objections to the Magistrate Judge's findings. Roberts v. Apfel, 222 F.3d 466, 470 (8<sup>th</sup> Cir. 2000).

IT IS HEREBY ORDERED that:

1. Plaintiffs' Motion for Summary Judgment [Docket No. 25] is  
DENIED;
2. Defendant's Motion for Summary Judgment [Docket No. 28] is  
GRANTED.

Date: January 30, 3006

s/ Michael J. Davis  
Michael J. Davis  
United States District Court

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